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SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS

NARCOTIC DRUGS

Summary of the report of the International Narcotics Drug Control Board for 1994

1. In accordance with the Single Convention on Narcotic Drugs, 1961, the International Narcotics Control Board (INCB) is required to prepare an annual report on its work and such additional reports as it considers necessary. An analogous obligation is set fourth in the Convention on Psychotropic Substances of 1971. The report must be submitted to the Economic and Social Council through the Commission on Narcotic Drugs. In each year's annual report, the Board provides a comprehensive survey of the current drug control situation in the world and recommends action that it considers appropriate.

2. The special subject of the overview to the report of INCB for 1994 was the evaluation of the effectiveness of the drug control treaties. This was one of the contributions which the Board decided to make in response to General Assembly resolution 48/12 , in which the Assembly requested the Commission on Narcotic Drugs, with the support of the United Nations International Drug Control Programme (UNDCP) and in cooperation with the International Narcotics Control Board, to monitor and evaluate action at the national and international levels in implementing the international drug control instruments with a view to identifying areas of satisfactory progress and weakness. In its evaluation, the Board worked closely with the Executive Director of UNDCP and the Commission on Narcotic Drugs, deciding to devote the overview of its report to an evaluation of the effectiveness of the drug control treaties and to consider the subject in further detail in a special supplement to the report.

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3. The Board noted that the evaluation of treaty implementation, based on data furnished by Governments and on its own monitoring of Governments' efforts, was the very nature of its work.

4. The Board, in its evaluation of the working of the treaties, did not present all their achievements, although it highlighted some of their successes, in particular in preventing the diversion of narcotic drugs and psychotropic substances in schedule II of the 1971 Convention. The Board identified priority areas in which Governments might step up their implementation. One area was precursor control and other matters covered by the 1988 Convention. Another was strategies to ensure the supply of narcotic drugs for medical purposes, which, the Board recalled, was one of the objectives of the treaties. The Board also identified areas that deserved more research, such as the linkages between inadequate national licit drug distribution systems and drug abuse.

5. Overall, the Board considered that it was not necessary to substantially amend the treaties, in particular expressing doubts about the feasibility of additional, more detailed and binding treaty provisions on demand reduction. However, the Board noted with interest discussions on a possible new convention against the laundering of money derived from organized crime activities, including drug trafficking.

6. Among the possible amendments identified by the Board for further consideration by Governments were the strengthening of measures to control poppy straw, the classification of cannabis products according to their potency, and solving the long-standing contradiction between the drug control treaties and some national legislations regarding traditional forms of coca leaf use, based on adequate scientific evaluations.

7. The Board also identified a number of other amendments that the Commission on Narcotic Drugs and the Economic and Social Council might consider making to the treaties, including adopting simpler scheduling procedures under the Convention on Psychotropic Substances, strengthening treaty-based control measures over psychotropic substances in line with Council resolutions, streamlining reporting procedures and introducing a simplified estimates system for synthetic narcotic drugs.

8. The Board noted that the drug control treaties were the legislative basis of the international drug control system. Their genesis and development were closely linked to national and international responses to changing drug abuse and trafficking situations. Each of the provisions of the three international drug control conventions had been the outcome of various national or international drug control experiences, of the exchange of views and expertise, and of compromises between various national situations and priorities. The three treaties were mutually supportive and complementary. They had one main goal, one philosophy: to prevent the non-medical use of drugs. That goal was motivated by humanitarian considerations, such as protecting the individual from the slavery of drug dependence and society from the irresponsible behaviour of intoxicated individuals.

9. The Board emphasized that universal adherence, proper implementation of treaty provisions at the national and international levels, and the rapid

adaptation of the drug control system to changing drug abuse and trafficking situations were the necessary conditions for ensuring the efficacy of the main international drug control conventions.

10. As of 1 November 1994, 149 States were Parties to the Single Convention on Narcotic Drugs of 1961, with 21 of them Parties to the Convention only and 128 of them Parties to the Convention as amended by its 1972 Protocol. One hundred thirty-two States were Parties to the Convention on Psychotropic Substances of 1971. As to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, 103 States and the European Union were Parties, representing about 54 per cent of all countries in the world.

11. In chapter II of its report the Board expressed the hope that the States concerned would not only take speedy action to become Parties to the international conventions but would also enact the necessary national legislation and regulations to fully comply with those conventions. The Board also commented on compliance of the different countries with the reporting requirements set by the three conventions, and emphasized the importance of submitting statistical returns and other information for the efficacy of the national and international drug control system.

12. As to the Single Convention on Narcotic Drugs of 1961, the Board examined trends in the demand for opiates and supply of opiate raw materials, concluding that in 1995 production was expected to exceed consumption by about 28 tons. The Board reported on its consultations with the Government of India regarding the level of its stocks of opium.

13. As to substances controlled under the Convention on Psychotropic Substances of 1971, diversions of those contained in schedules III and IV were continuing. The Board appreciated the fact that most Governments had already established effective mechanisms of export control for those substances. Many Governments were also consulting the Board in cases where there were doubts over the legitimacy of import orders, and the Board gave examples of successes in preventing diversion through such cooperation. However, the Board also highlighted diversion involving countries with non-existent or weak export controls. Diversion and abuse of benzodiazepines, due to weak controls over trade in those substances, were of particular concern to the Board.

14. As to the Convention Against Illicit Traffic of 1988, diversion and smuggling of precursors had continued and had been reported world wide. The Board, in cooperation with Governments, had detected cases of diversion and attempted diversion of large quantities of ephedrine, a substance that had been included in table I of the 1988 Convention because of its frequent use in illicit manufacture of methamphetamine. The Board reiterated its request to all states that had not already done so to become Parties to the 1988 Convention, as well as its request to all States, including those not Parties to the Convention, to ensure universal application of the provisions of the 1988 Convention. It also invited all States to review their existing precursor controls and to consider taking further action to prevent diversion.

15. In chapter III of the report, the Board presented some of the conclusions of its missions to Belarus, Belgium, Brazil, Cambodia, Denmark, China, India,

Italy, the Lao People's Democratic Republic, Lebanon, Luxembourg, Nigeria, Spain, Switzerland, Turkey and Venezuela.

16. In Africa, the Board pointed to the continuing transit traffic of heroin and cocaine and a worsening abuse situation. New routes were developing for cocaine, including Angola, Namibia and South Africa. While abuse of amphetamine, amphetamine-type stimulants and sedatives were widespread, heroin and cocaine abuse were on the increase within certain segments of urban populations. Africa was an important supplier of cannabis for the rest of the world, with important shipments being sent from Morocco and, increasingly, from sub-Saharan Africa. Comprehensive intervention and drug control strategies were needed to avoid an escalation of the drug problem in Africa and the Board called upon Governments and the international community to increase their support to African Governments.

17. The geographical location and limited interception capacities of the countries of Central America and the Caribbean were increasingly being exploited by international drug traffickers for the transshipment of cocaine and (in the case of the Caribbean) cannabis destined for North America and Europe. Transit traffic had fostered growing abuse of cocaine, including crack, in Central America as a whole. Ready availability of preparations containing psychotropic substances, due to weak controls over their distribution, had led to increasing abuse of hypnotics, sedatives and anxiolytics, particularly benzodiazepines. The Board welcomed the establishment by Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama of a permanent Central American commission for the eradication of illicit production, traffic and abuse of narcotic drugs and psychotropic substances.

18. In North America, the Board referred to the gradual elimination of trade barriers between Canada, Mexico and the United States of America under the North American Free Trade Agreement (NAFTA), which had entered into force the previous year. The Board expressed its confidence that enhanced cooperation in the control of shipments of narcotic drugs and psychotropic substances would allow those three countries to prevent any negative side-effects that the free trade agreement might have on drug trafficking. The Board appreciated the comprehensive drug control strategies of those three countries and their key component: demand reduction. In particular, it reported on continuing major drug-related crime and acquired immunodeficiency syndrome (AIDS) problems in the United States of America. Heroin of growing purity was increasingly being seized, crack was reported to be available and abused throughout the United States, and the illicit manufacture, traffic and abuse of methamphetamine continued to pose substantial problems. Crack was also spreading in the urban areas of eastern and central Canada. Cannabis eradication had expanded in Mexico, which supplied a large part of the illicit market in the United States.

19. The Board appreciated that UNDCP had signed a memorandum of understanding with four South American countries (Argentina, Bolivia, Chile and Peru) to improve subregional cooperation in the field of drug control. The Board drew the attention of the Governments of South American countries to the need for effective legislation on the prevention of money laundering. Peru remained the world's largest producer of coca leaves, despite a decrease of its production in 1993. Peru and Bolivia remained the major producers of coca paste, which was

being transformed into cocaine hydrochloride mainly in Colombia and to some extent locally as well. The chemicals necessary for that process continued to be widely available in those countries, and the Government of Colombia was praised for seizing large quantities of chemicals and solvents contained in tables I and II of the 1988 Convention. In addition to the continuing problem of abuse of coca paste mixed with cannabis or tobacco, the abuse of crack was reported in several countries of the region. Abuse of psychotropic substances was on the increase in several countries, partly as a result of insufficiencies in the control of pharmaceutical preparations containing such substances. Illicit opium poppy cultivation was reported in some countries, and the Board stressed that such cultivation, as well as opium production and the manufacture of morphine and heroin, should be prevented by Governments as a matter of high priority.

20. In South-East Asia, where several countries were strengthening their legislative structures, the Board noted with satisfaction the increasing cooperation between China, the Lao People's Democratic Republic, Myanmar and Thailand in alternative development, reduction of illicit drug demand and law enforcement. Money laundering remained a significant problem and the Board encouraged Governments to follow the recommendations of the Financial Action Task Force. Illicit opium poppy cultivation continued, mainly along the borders of Myanmar. Following successes in Thailand in reducing the illicit poppy cultivation and opium production, there had also been a considerable reduction of opium production in some districts of the Lao People's Democratic Republic. Diverse routes had been used for trafficking, such as through Viet Nam and by land through China, but Thailand had remained a major outlet for heroin from the Golden Triangle.

21. Heroin was the main drug of abuse, in particular in Thailand, Singapore and Hong Kong, and opium was also being abused, mainly in rural areas of South-East Asia. Large-scale illicit manufacture of, trafficking in and abuse of methamphetamine were also serious drug problems in the region. Cocaine abuse was emerging in some countries of the region.

22. In South Asia, increasing traffic in and abuse of cannabis had been reported in several countries, and the smuggling of cannabis resin out of Nepal and South-West Asia continued. Clandestine heroin manufacture was on the increase in India. Increasing heroin abuse was being reported throughout the region, particularly in the urban areas of India, Maldives and Nepal. The abuse of cough syrups containing codeine was reported in Bangladesh, Maldives and Nepal. The Board noted with concern that buprenorphine licitly manufactured in India was increasingly being abused in Bangladesh, India and Nepal. The illicit manufacture of methaqualone and the smuggling of that substance into Africa, also remained a major problem.

23. Turning to South-West Asia, the Board drew attention to the increase in drug-related crime, which had accompanied the major socio-economic difficulties faced by member States of the Commonwealth of Independent States in the Caucasus (Armenia, Azerbaijan and Georgia) and Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). There was an urgent need to increase international assistance to those countries. The spread of the abuse of opiates and ephedrone by injection was a major concern of the authorities of CIS member

States in Central Asia, where about 1 per cent of the population were estimated to be occasional or regular drug abusers. The trafficking route from Afghanistan and Pakistan through the Islamic Republic of Iran to Turkey continued to be the main route for cannabis resin and heroin destined for Europe.

24. A memorandum of understanding had been signed between the Islamic Republic of Iran and Pakistan, with the support of UNDCP, covering the main areas of drug control. The Board hoped that the growing economic cooperation in the region would lead to closer cooperation at the operational level in the fight against drug trafficking. It also called for enhanced demand reduction efforts. Large-scale cannabis cultivation continued in Pakistan and Afghanistan, and the abuse of cannabis and cannabis resin remained a problem in the whole region. Illicit manufacture of heroin also continued, in northern Afghanistan for example, and large quantities of opium and morphine had been smuggled out of Pakistan and Afghanistan into other countries of the region for further processing.

25. In Western Europe, the Maastricht Treaty, which had entered into force in November 1993, had prepared the way for an integrated approach to drug control in Europe and the adoption of specific provisions in the field. The Board welcomed the fact that the European Union action plan to combat drugs for the period 1995-1999 would give special attention to demand reduction. It warned against the consequences of tolerating drug sale and abuse. The Board recognized the importance of harm reduction policies but stressed that they were no substitute for demand reduction policies.

26. In the CIS member States of Europe (Belarus, the Republic of Moldova, the Russian Federation and Ukraine), cannabis and poppy straw were the major locally produced drugs but the illicit manufacture of synthetic drugs (opiates and psychotropic substances) was rapidly increasing. There was also significant transit trafficking. The Board invited the international community to support the efforts of UNDCP to assist those countries.

27. Huge quantities of cannabis and cannabis resin were smuggled out of Africa and West Asia into Europe, where it remained the most abused drug. Record heroin and cocaine seizures had been effected in 1993 in Europe. While several countries had reported a shift from heroin to cocaine abuse, heroin was increasingly being abused in some countries in central and eastern Europe. The abuse of crack was expanding in several countries, and a proliferation of kitchen laboratories for refining cocaine was suspected. The illicit manufacture of methamphetamine had remained a major problem, and expanding illicit markets were being supplied from the Netherlands (80 per cent of seizures) and also from Poland. Clandestine methamphetamine laboratories had been dismantled in the Czech Republic, Germany, the United Kingdom of Great Britain and Northern Ireland, and Ukraine. The Board also drew attention to the need for policies to reduce medically unjustified demand for hypnotics, sedatives and anxiolytics.

28. Countries in Oceania were increasingly being used as transit points and risked becoming centres for laundering profits from illicit drug trafficking. Australia was assisting in revising and harmonizing legislation in the region. Demand-reduction strategies were being implemented in, inter alia, Papua New

Guinea, with the assistance of UNDCP and Australia. The Board expressed its concern about the propagation of cannabis varieties with a very high THC content in Papua New Guinea.

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SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS: HUMAN RIGHTS QUESTIONS

International Covenant on Civil and Political Rights: General Comments of the Human Rights Committee

Note by the Secretariat

In pursuance of Economic and Social Council decision 1985/105 of 8 February 1985, the Secretary-General transmits herewith to the Council General Comment No. 24 (52) (General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant) of the Human Rights Committee, adopted by the Committee at its 1382nd meeting (fifty-second session), on 2 November 1994 (CCPR/C/21/Rev.1/Add.6).

General Comment No. 24 (52) 1/

General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant

1. As of 1 November 1994, 46 of the 127 States parties to the International Covenant on Civil and Political Rights had, between them, entered 150

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1/ Adopted by the Committee at its 1382nd meeting (fifty-second session) on 2 November 1994.

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reservations of varying significance to their acceptance of the obligations of the Covenant. Some of these reservations exclude the duty to provide and guarantee particular rights in the Covenant. Others are couched in more general terms, often directed to ensuring the continued paramountcy of certain domestic legal provisions. Still others are directed at the competence of the Committee. The number of reservations, their content and their scope may undermine the effective implementation of the Covenant and tend to weaken respect for the obligations of States parties. It is important for States parties to know exactly what obligations they, and other States parties, have in fact undertaken. And the Committee, in the performance of its duties under either article 40 of the Covenant or under the Optional Protocols, must know whether a State is bound by a particular obligation or to what extent. This will require a determination as to whether a unilateral statement is a reservation or an interpretative declaration and a determination of its acceptability and effects.

2. For these reasons the Committee has deemed it useful to address in a General Comment the issues of international law and human rights policy that arise. The General Comment identifies the principles of international law that apply to the making of reservations and by reference to which their acceptability is to be tested and their purport to be interpreted. It addresses the role of States parties in relation to the reservations of others. It further addresses the role of the Committee itself in relation to reservations. And it makes certain recommendations to present States parties for a reviewing of reservations and to those States that are not yet parties about legal and human rights policy considerations to be borne in mind should they consider ratifying or acceding with particular reservations.

3. It is not always easy to distinguish a reservation from a declaration as to a State's understanding of the interpretation of a provision, or from a statement of policy. Regard will be had to the intention of the State, rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation. 2/ Conversely, if a so-called reservation merely offers a State's understanding of a provision but does not exclude or modify that provision in its application to that State, it is, in reality, not a reservation.

4. The possibility of entering reservations may encourage States which consider that they have difficulties in guaranteeing all the rights in the Covenant none the less to accept the generality of obligations in that instrument. Reservations may serve a useful function to enable States to adapt specific elements in their laws to the inherent rights of each person as articulated in the Covenant. However, it is desirable in principle that States accept the full range of obligations, because the human rights norms are the legal expression of the essential rights that every person is entitled to as a human being.

5. The Covenant neither prohibits reservations nor mentions any type of permitted reservation. The same is true of the first Optional Protocol. The

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2/ Article 2 (1) (d), Vienna Convention on the Law of Treaties 1969.

Second Optional Protocol provides, in article 2, paragraph 1, that "No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime". Paragraphs 2 and 3 provide for certain procedural obligations.

6. The absence of a prohibition on reservations does not mean that any reservation is permitted. The matter of reservations under the Covenant and the first Optional Protocol is governed by international law. Article 19 (3) of the Vienna Convention on the Law of Treaties provides relevant guidance. 3/ It stipulates that where a reservation is not prohibited by the treaty or falls within the specified permitted categories, a State may make a reservation provided it is not incompatible with the object and purpose of the treaty. Even though, unlike some other human rights treaties, the Covenant does not incorporate a specific reference to the object and purpose test, that test governs the matter of interpretation and acceptability of reservations.

7. In an instrument which articulates very many civil and political rights, each of the many articles, and indeed their interplay, secures the objectives of the Covenant. The object and purpose of the Covenant is to create legally binding standards for human rights by defining certain civil and political rights and placing them in a framework of obligations which are legally binding for those States which ratify; and to provide an efficacious supervisory machinery for the obligations undertaken.

8. Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve inter se application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations. Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And while reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would not be.

3/ Although the Vienna Convention on the Law of Treaties was concluded in 1969 and entered into force in 1980 - i.e. after the entry into force of the Covenant - its terms reflect the general international law on this matter as had already been affirmed by the International Court of Justice in The Reservations to the Genocide Convention Case of 1951.

9. Applying more generally the object and purpose test to the Covenant, the Committee notes that, for example, reservation to article 1 denying peoples the right to determine their own political status and to pursue their economic, social and cultural development, would be incompatible with the object and purpose of the Covenant. Equally, a reservation to the obligation to respect and ensure the rights, and to do so on a non-discriminatory basis (art. 2 (1)) would not be acceptable. Nor may a State reserve an entitlement not to take the necessary steps at the domestic level to give effect to the rights of the Covenant (art. 2 (2)).

10. The Committee has further examined whether categories of reservations may offend the "object and purpose" test. In particular, it falls for consideration as to whether reservations to the non-derogable provisions of the Covenant are compatible with its object and purpose. While there is no hierarchy of importance of rights under the Covenant, the operation of certain rights may not be suspended, even in times of national emergency. This underlines the great importance of non-derogable rights. But not all rights of profound importance, such as articles 9 and 27 of the Covenant, have in fact been made non-derogable. One reason for certain rights being made non-derogable is because their suspension is irrelevant to the legitimate control of the state of national emergency (for example, no imprisonment for debt, in art. 11). Another reason is that derogation may indeed be impossible (as, for example, freedom of conscience). At the same time, some provisions are non-derogable exactly because without them there would be no rule of law. A reservation to the provisions of article 4 itself, which precisely stipulates the balance to be struck between the interests of the State and the rights of the individual in times of emergency, would fall in this category. And some non-derogable rights, which in any event cannot be reserved because of their status as peremptory norms, are also of this character - the prohibition of torture and arbitrary deprivation of life are examples. 4/ While there is no automatic correlation between reservations to non-derogable provisions, and reservations which offend against the object and purpose of the Covenant, a State has a heavy onus to justify such a reservation.

11. The Covenant consists not just of the specified rights, but of important supportive guarantees. These guarantees provide the necessary framework for securing the rights in the Covenant and are thus essential to its object and purpose. Some operate at the national level and some at the international level. Reservations designed to remove these guarantees are thus not acceptable. Thus, a State could not make a reservation to article 2, paragraph 3, of the Covenant, indicating that it intends to provide no remedies for human rights violations. Guarantees such as these are an integral part of the structure of the Covenant and underpin its efficacy. The Covenant also envisages, for the better attainment of its stated objectives, a monitoring role for the Committee. Reservations that purport to evade that essential element in the design of the Covenant, which is also directed to securing the enjoyment of the rights, are also incompatible with its object and purpose. A State may not

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4/ Reservations have been entered to both article 6 and article 7, but not in terms which reserve a right to torture or to engage in arbitrary deprivation of life.

reserve the right not to present a report and have it considered by the Committee. The Committee's role under the Covenant, whether under article 40 or under the Optional Protocols, necessarily entails interpreting the provisions of the Covenant and the development of a jurisprudence. Accordingly, a reservation that rejects the Committee's competence to interpret the requirements of any provisions of the Covenant would also be contrary to the object and purpose of that treaty.

12. The intention of the Covenant is that the rights contained therein should be ensured to all those under a State party's jurisdiction. To this end certain attendant requirements are likely to be necessary. Domestic laws may need to be altered properly to reflect the requirements of the Covenant; and mechanisms at the domestic level will be needed to allow the Covenant rights to be enforceable at the local level. Reservations often reveal a tendency of States not to want to change a particular law. And sometimes that tendency is elevated to a general policy. Of particular concern are widely formulated reservations which essentially render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations. No real international rights or obligations have thus been accepted. And when there is an absence of provisions to ensure that Covenant rights may be sued on in domestic courts, and, further, a failure to allow individual complaints to be brought to the Committee under the first Optional Protocol, all the essential elements of the Covenant guarantees have been removed.

13. The issue arises as to whether reservations are permissible under the first Optional Protocol and, if so, whether any such reservation might be contrary to the object and purpose of the Covenant or of the first Optional Protocol itself. It is clear that the first Optional Protocol is itself an international treaty, distinct from the Covenant but closely related to it. Its object and purpose is to recognize the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation by a State party of any of the rights in the Covenant. States accept the substantive rights of individuals by reference to the Covenant, and not the first Optional Protocol. The function of the first Optional Protocol is to allow claims in respect of those rights to be tested before the Committee. Accordingly, a reservation to an obligation of a State to respect and ensure a right contained in the Covenant, made under the first Optional Protocol when it has not previously been made in respect of the same rights under the Covenant, does not affect the State's duty to comply with its substantive obligation. A reservation cannot be made to the Covenant through the vehicle of the Optional Protocol but such a reservation would operate to ensure that the State's compliance with that obligation may not be tested by the Committee under the first Optional Protocol. And because the object and purpose of the first Optional Protocol is to allow the rights obligatory for a State under the Covenant to be tested before the Committee, a reservation that seeks to preclude this would be contrary to the object and purpose of the first Optional Protocol, even if not of the Covenant. A reservation to a substantive obligation made for the first time under the first Optional Protocol would seem to reflect an intention by the State concerned to prevent the Committee from expressing its views relating to a particular article of the Covenant in an individual case.

14. The Committee considers that reservations relating to the required procedures under the first Optional Protocol would not be compatible with its object and purpose. The Committee must control its own procedures as specified by the Optional Protocol and its rules of procedure. Reservations have, however, purported to limit the competence of the Committee to acts and events occurring after entry into force for the State concerned of the first Optional Protocol. In the view of the Committee this is not a reservation but, most usually, a statement consistent with its normal competence ratione temporis. At the same time, the Committee has insisted upon its competence, even in the face of such statements or observations, when events or acts occurring before the date of entry into force of the first Optional Protocol have continued to have an effect on the rights of a victim subsequent to that date. Reservations have been entered which effectively add an additional ground of inadmissibility under article 5, paragraph 2, by precluding examination of a communication when the same matter has already been examined by another comparable procedure. In so far as the most basic obligation has been to secure independent third party review of the human rights of individuals, the Committee has, where the legal right and the subject-matter are identical under the Covenant and under another international instrument, viewed such a reservation as not violating the object and purpose of the first Optional Protocol.

15. The primary purpose of the Second Optional Protocol is to extend the scope of the substantive obligations undertaken under the Covenant, as they relate to the right to life, by prohibiting execution and abolishing the death penalty. 5/ It has its own provision concerning reservations, which is determinative of what is permitted. Article 2, paragraph 1, provides that only one category of reservation is permitted, namely one that reserves the right to apply the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. Two procedural obligations are incumbent upon States parties wishing to avail themselves of such a reservation. Article 2, paragraph 1, obliges such a State to inform the Secretary-General, at the time of ratification or accession, of the relevant provisions of its national legislation during warfare. This is clearly directed towards the objectives of specificity and transparency and in the view of the Committee a purported reservation unaccompanied by such information is without legal effect. Article 2, paragraph 3, requires a State making such a reservation to notify the Secretary-General of the beginning or ending of a state of war applicable to its territory. In the view of the Committee, no State may seek to avail itself of its reservation (that is, have execution in time of war regarded as lawful) unless it has complied with the procedural requirement of article 2, paragraph 3.

16. The Committee finds it important to address which body has the legal authority to make determinations as to whether specific reservations are compatible with the object and purpose of the Covenant. As for international

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5/ The competence of the Committee in respect of this extended obligation is provided for under article 5 - which itself is subject to a form of reservation in that the automatic granting of this competence may be reserved through the mechanism of a statement made to the contrary at the moment of ratification or accession.

treaties in general, the International Court of Justice has indicated in the Reservations to the Genocide Convention Case (1951) that a State which objected to a reservation on the grounds of incompatibility with the object and purpose of a treaty could, through objecting, regard the treaty as not in effect as between itself and the reserving State. Article 20, paragraph 4, of the Vienna Convention on the Law of Treaties 1969 contains provisions most relevant to the present case on acceptance of and objection to reservations. This provides for the possibility of a State to object to a reservation made by another State. Article 21 deals with the legal effects of objections by States to reservations made by other States. Essentially, a reservation precludes the operation, as between the reserving and other States, of the provision reserved; and an objection thereto leads to the reservation being in operation as between the reserving and objecting State only to the extent that it has not been objected to.

17. As indicated above, it is the Vienna Convention on the Law of Treaties that provides the definition of reservations and also the application of the object and purpose test in the absence of other specific provisions. But the Committee believes that its provisions on the role of State objections in relation to reservations are inappropriate to address the problem of reservations to human rights treaties. Such treaties, and the Covenant specifically, are not a web of inter-State exchanges of mutual obligations. They concern the endowment of individuals with rights. The principle of inter-State reciprocity has no place, save perhaps in the limited context of reservations to declarations on the Committee's competence under article 41. And because the operation of the classic rules on reservations is so inadequate for the Covenant, States have often not seen any legal interest in or need to object to reservations. The absence of protest by States cannot imply that a reservation is either compatible or incompatible with the object and purpose of the Covenant. Objections have been occasional, made by some States but not others, and on grounds not always specified; when an objection is made, it often does not specify a legal consequence, or sometimes even indicates that the objecting party none the less does not regard the Covenant as not in effect as between the parties concerned. In short, the pattern is so unclear that it is not safe to assume that a non-objecting State thinks that a particular reservation is acceptable. In the view of the Committee, because of the special characteristics of the Covenant as a human rights treaty, it is open to question what effect objections have between States inter se. However, an objection to a reservation made by States may provide some guidance to the Committee in its interpretation as to its compatibility with the object and purpose of the Covenant.

18. It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because, as indicated above, it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions. In order to know the scope of its duty to examine a State's compliance under article 40 or a communication under the first Optional Protocol, the Committee has necessarily to take a view on the compatibility of a reservation with the object and purpose of the Covenant and with general international law. Because of the special character of a human rights treaty, the compatibility of a reservation

with the object and purpose of the Covenant must be established objectively, by reference to legal principles, and the Committee is particularly well placed to perform this task. The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation.

19. Reservations must be specific and transparent, so that the Committee, those under the jurisdiction of the reserving State and other States parties may be clear as to what obligations of human rights compliance have or have not been undertaken. Reservations may thus not be general, but must refer to a particular provision of the Covenant and indicate in precise terms its scope in relation thereto. When considering the compatibility of possible reservations with the object and purpose of the Covenant, States should also take into consideration the overall effect of a group of reservations, as well as the effect of each reservation on the integrity of the Covenant, which remains an essential consideration. States should not enter so many reservations that they are in effect accepting a limited number of human rights obligations, and not the Covenant as such. So that reservations do not lead to a perpetual non-attainment of international human rights standards, reservations should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law. Nor should interpretative declarations or reservations seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be identical, or to be accepted only in so far as they are identical, with existing provisions of domestic law. States should not seek through reservations or interpretative declarations to determine that the meaning of a provision of the Covenant is the same as that given by an organ of any other international treaty body.

20. States should institute procedures to ensure that each and every proposed reservation is compatible with the object and purpose of the Covenant. It is desirable for a State entering a reservation to indicate in precise terms the domestic legislation or practices which it believes to be incompatible with the Covenant obligation reserved; and to explain the time period it requires to render its own laws and practices compatible with the Covenant, or why it is unable to render its own laws and practices compatible with the Covenant. States should also ensure that the necessity for maintaining reservations is periodically reviewed, taking into account any observations and recommendations made by the Committee during examination of their reports. Reservations should be withdrawn at the earliest possible moment. Reports to the Committee should contain information on what action has been taken to review, reconsider or withdraw reservations.